

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

BRET A. BIELEMA

PLAINTIFF

V.

5:20-cv-05104-PKH

THE RAZORBACK FOUNDATION, INC.

DEFENDANT

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Defendant, The Razorback Foundation, Inc. (the "Foundation"), by and through its attorneys, Friday, Eldredge & Clark, LLP, for its Motion to Dismiss Plaintiff's Amended Complaint, states as follows:

1. On June 12, 2020, former Razorback Coach Bret Bielema filed this action against the Foundation (the "Complaint"). Doc. No. 2. Bielema asserted claims for breach of contract and false light invasion of privacy in his Complaint.

2. On June 26, 2020, the Foundation filed a motion to dismiss, arguing that dismissal was proper because (i) the parties' contract requires the dispute to be heard in Washington County Circuit Court and (ii) assuming the allegations in the Complaint were true, the Foundation was immune from suit in federal court. *See* Doc. Nos. 12-13.

3. Recognizing that the allegations in the initial Complaint were fatal to federal jurisdiction, Bielema filed an Amended Complaint ("Amended Complaint") on July 2, 2020. Doc. No. 19.

4. However, no amount of new or alternative facts can help Bielema escape the forum selection clause in the parties' agreement that requires the dispute to be heard in Washington

County Circuit Court. The parties contractually agreed for another forum to resolve this dispute, and that agreement should be enforced.

5. Additionally, the Court is not required to accept the truth of Bielema's new allegations because they directly contradict the factual allegations made in the original complaint (and made by Bielema's counsel for months prior to filing suit).

6. As a result, and for the reasons set forth in the Brief in Support of this Motion filed contemporaneously herewith and incorporated herein by reference in full, the Court should dismiss the Amended Complaint under the doctrine of *forum non conveniens*, or alternatively under Fed. R. Civ. P. 12(b)(6), or alternatively under Fed. R. Civ. P. 12(b)(1).

WHEREFORE, the Foundation hereby requests that Plaintiff's Amended Complaint be dismissed with prejudice and that the Court grant it any other relief to which it is entitled, including, without limitation, attorneys' fees and costs incurred with respect to this Motion.

Respectfully submitted,

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By: /s/ Marshall S. Ney
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CERTIFICATE OF SERVICE

I, Marshall S. Ney, do hereby certify that the foregoing is being electronically filed with the Court and that the below listed persons will receive a copy of the foregoing via the Court's electronic notification system (ECF), on or about this 15th day of July, 2020:

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